to make the last finding.

The arresting officer had allegedly viewed the illegal act for what could have been less than a second and there was no evidence of spoken communication between petitioner and his co-defendant at the time or of a pre-arranged meeting. Hence it seems apparent that a reasonable doubt as to guilt might have existed in the minds of the jury, on this testimony alone, because of the improbability of two strangers engaging in such conduct without pre-arrangement.

The arresting officer's testimony of alleged illegal acts of petitioner and his co-defendant preceeding the alleged illegal act had a tendency to dispel that doubt since the acts were suggestive of a mutual, silent solicitation. On the other hand, the acts were at best ambiguous and had an alternative, innocent explanation.

It follows that the erroneously introduced admissions were of crucial effect, or, at least, reasonably could have been of crucial effect in eliminating doubt in the minds of the jury.

Hence, under the Chapman rule, there was no alternative but to find the error reversible. It is therefore submitted that the state appellate Court misapplied the Chapman rule even though giving lip service to it.

PRAYER

Wherefore, Petitioner prays that this Honorable Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

I. A. KANAREK

Attorney for Petitioner
Guilford Dinsmuir Shaw

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GUILFORD DINSMUIR SHAW,
Petitioner-Appellant,

v.

PETER PITCHESS, Sheriff of
Los Angeles County,
Respondent-Appellee.

No. 25,511

[March 24, 1971]

Appeal from the United States District Court
Central District of California

Before: WRIGHT, CARTER and TRASK, Circuit Judges

PER CURIAM:

Appellant was found guilty and sentenced for the crime of oral copulation in violation of California Penal Code, § 288a. The state Court of Appeals affirmed the conviction in an unreported decision. Certiorari was denied by the United States Supreme Court, 395 U.S. 211 (1969).

Appellant then petitioned for writ of habeas corpus in the district court below. The district court found no factual issues were involved, no evidentiary hearing was required and that the state courts had adequately disposed of the matter. The district court denied relief in an order entered on November 26, 1969, and incorporated much of the text of the unreported opinion of the state Court of Appeals.

On the basis of the district court's order in *Shaw v. Pitchess*, (C.D. Cal. 1969) ——F. Supp. ——, we affirm.

APPENDIX B

IN THE MUNICIPAL COURT OF SANTA MONICA JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

COMPLAINT
FELONY

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
GUILFORD DISMUIR SHAW and
JIMMY GONZALES PERALTA,
Defendants.

M. C. No.
Filed 3/22/65
Clerk of the above entitled Court, County of Los Angeles, State of California.
By 1127 Deputy Clerk
S. C. No.

Personally appeared before me this 22nd day of March, 1965
C. Sutter
of the County of Los Angeles, who being first duly sworn on oath, upon information and belief complains and says:

That on or about the 19th day of March, 1965 at and in the County of Los Angeles, State of California, the crime of VIOLATION OF SECTION 286a, Penal Code of California, a felony, was committed by

GUILFORD DUSMUIR SHAW and JIMMY GONZALES PERALTA,

who, at the time and place last aforesaid, did willfully, unlawfully and feloniously participate in the act of copulating the sexual organ, to wit, the penis, of him, the said JIMMY GONZALES PERALTA, with the mouth of GUILFORD DUSMUIR SHAW.

Said complainant therefore prays that a warrant may be issued for the arrest of the defendant who may then be dealt with according to law.

C. Sutter

Subscribed and sworn to before me on
March, 22, 1965

Judge of the above entitled Court

EVELLE J. YOUNGER
Issued by District Attorney
By
GILBERT C. CATON Deputy
Bail Recommended
$ 1,000.00 + 100 P.N.
WITNESSES

C. Sutter, SMPD

EXHIBIT A

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.
ATTEST MAR 1? 19..
WILLIAM G. SHARP County Clerk and Clerk of the Superior Court of the State of California, for the County of Los Angeles.
BY DEPUTY

(SMPD)

BEST AVAILABLE COPY

APPENDIX C

APPENDIX C (a)

§ 813. Warrant; issuance

When a complaint is filed with a magistrate charging a public offense originally triable in the superior court of the county in which he sits, if such magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant for the arrest of the defendant; provided, that when the magistrate is a judge of the justice court, he may issue such a warrant only upon the concurrence of the district attorney of the county in which he sits or the Attorney General of the State of California.

(Enacted 1872. Amended by Stats.1951, c. 1674, p. 3834, § 27; Stats. 1963, c. 1712, p. 3362, § 2, effective July 17, 1963.)

§ 814. Warrant; form

A warrant of arrest issued under Section 813 may be in substantially the following form:

County of ———

The people of the State of California to any peace officer of said State:

Complaint on oath having this day been laid before me that the crime of ——— (designating it generally) has been committed and accusing ——— (naming defendant) thereof, you are therefore commanded forthwith to arrest the above named defendant and bring him before me at ——— (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at ——— (place) this ——— day of ———, 19—.

———

(Signature and full official title of magistrate.)

(Enacted 1872. Amended by Stats.1951, c. 1674, p. 3834, § 28.)

§ 806. Proceeding for examination before magistrate; complaint; formalities; contents; construction and effect

A proceeding for the examination before a magistrate of a person on a charge of an offense originally triable in a superior court must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate; provided, that when such magistrate is a judge of the justice court, the proceeding must be commenced by a written complaint under oath subscribed by the complainant, filed with the magistrate and concurred in by the district attorney of the county in which he sits or the Attorney General of the State of California. Such complaint may be verified on information and belief. When the complaint is used as a pleading to which the defendant pleads guilty under Section 859a of this code, the complaint shall contain the same allegations, including the charge of prior conviction or convictions of crime, as are required for indictments and informations and, wherever applicable, shall be construed and shall have substantially the same effect as provided in this code for indictments and informations.

(Enacted 1872. Amended by Code Am.1880, c. 47, p. 12, § 11; Stats. 1935, c. 217, p. 873, § 2; Stats.1951, c. 1674, p. 3834, § 25; Stats.1963, c. 1712, p. 3362, § 1, eff. July 17, 1963.)

§ 859. Offense within original jurisdiction of superior court; appearance before magistrate; copy of complaint; counsel; minors

When the defendant is charged with the commission of a public offense, over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable, he shall, without unnecessary delay, be taken before a magistrate of the court in which such complaint is on file. The magistrate shall immediately deliver to him a copy of the complaint, inform him of his right to the aid of counsel, ask him if he desires the aid of counsel, and allow him a reasonable time to send for counsel; and the magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer must, without delay and without fee, perform that duty. If the defendant desires and is unable to employ counsel, the court must assign counsel to defend him. If it appears that the defendant may be a minor, the magistrate shall ascertain whether such is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

(Enacted 1872. Amended by Stats.1927, c. 615, p. 1044, § 1; Stats. 1935, c. 141, p. 492, § 1; Stats.1951, c. 1160, p. 2958, § 1; Stats.1951, c. 1608, p. 3613, § 12; Stats.1957, c. 209, p. 871, § 1; Stats.1959, c.

§ 859a. Non-capital felony; defendant represented by counsel; procedure to take plea; plea of guilty to offense charged or lesser offense; commitment; certification to superior court

If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him whether he pleads guilty or not guilty to the offense charged therein and to a previous conviction or convictions of crime if charged; thereupon, or at any time thereafter, while the charge remains pending before the magistrate and when his counsel is present, the defendant may, with the consent of the magistrate, and the district attorney or other counsel for the people, plead guilty to the offense charged or to any other offense the commission of which is necessarily included in that with which he is charged, or to an attempt to commit the offense charged and to the previous conviction or convictions of crime if charged; and upon such plea of guilty, the magistrate may then fix a reasonable bail as provided by this code, and upon failure to deposit such bail or surety, shall immediately commit the defendant to the sheriff and certify the case, including a copy of all proceedings therein and such testimony as in his discretion he may require to be taken, to the superior court, and thereupon such proceedings shall be had as if such defendant had pleaded guilty in such court. The foregoing provisions of this section shall not be construed to authorize the receiving of a plea of guilty from any defendant not represented by counsel. If the defendant subsequently files a written motion to withdraw the plea under Section 1018, the motion shall be heard and determined by the court before which the plea was entered.

(Added by Stats.1935, c. 141, p. 493, § 2. Amended by Stats.1965, c. 2022, p. 4587, § 1; Stats.1965, c. 2023, p. 4588, § 2.)

§ 948. Forms; rules for determination of sufficiency of pleadings

FORM OF AND RULES OF PLEADING. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this Code.

(Enacted 1872.)

Derivation: Stats.1851, c. 29, p. 237, § 235.

§ 949. First pleading by people; superior court; inferior courts

The first pleading on the part of the people in the superior court is the indictment, information, accusation or the complaint in any case certified to the superior court under the provisions of Section 859a or the complaint filed in accordance with the provisions of Section 702 of the Welfare and Institutions Code.[1] The first pleading on the part of the people in all inferior courts is the complaint except as otherwise provided by law.

(Enacted 1872. Amended by Code Am.1880, c. 47, p. 12, § 14; Stats. 1951, c. 1674, p. 3836, § 42.)

[1] Repealed 1961. See, now, § 272.

APPENDIX C (b)

§ 288a. Perversion; copulation with the mouth; punishment

Any person participating in an act of copulating the mouth of one person with the sexual organ of another is punishable by imprisonment in the state prison for not exceeding 15 years, or by imprisonment in the county jail not to exceed one year; provided, however, whenever any person is found guilty of the offense specified herein, and it is charged and admitted or found to be true that he is more than 10 years older than his coparticipant in such an act, which coparticipant is under the age of 14, or that he has compelled the other's participation in such an act by force, violence, duress, menace, or threat of great bodily harm, he shall be punished by imprisonment in the state prison for not less than three years. The order of commitment shall expressly state whether a person convicted hereunder is more than 10 years older than his coparticipant and whether such coparticipant is under the age of 14. The order shall also state whether a person convicted hereunder has compelled coparticipation in his act by force, violence, duress, menace, or threat of great bodily harm.
(Added by Stats.1921, c. 848, p. 1633, § 2. Amended by Stats.1950, 1st Ex.Sess., c. 56, p. 512, § 1; Stats.1952, 1st Ex.Sess., c. 23, p. 380, § 3; Stats.1955, c. 274, p. 729, § 1.)

APPENDIX C (c)

AMENDMENT IV—SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX C (d)

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX C (e)

§ 290. Registration of sex offenders

Duty to register; time. Any person who, since the first day of July, 1944, has been or is hereafter convicted in the State of California of the offense of assault with intent to commit rape or the in-

famous crime against nature, under Section 220, or of any offense defined in Sections 266, 267, 268, 285, 286, 288, 288a, subdivision 1 of Section 647a, subdivision 3 or 4 of Section 261, subdivision (a) or (d) of Section 647, or subdivision 1 or 2 of Section 314 of this code, or of any offense involving lewd and lascivious conduct under Section 272 of the Penal Code; or any person who since said date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since said date or at any time hereafter is discharged or paroled from a penal institution where he was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since said date or at any time hereafter is determined to be a sexual psychopath under the provisions of Chapter 4 of Part 1 of Division 6 of the Welfare and Institutions Code; or any person who has been since said date or is hereafter convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses shall within 30 days after the effective date of this section or within 30 days of his coming into any county or city, or city and county in which he resides or is temporarily domiciled for such length of time register with the chief of police of the city in which he resides or the sheriff of the county if he resides in an unincorporated area.

Notice of duty to register; prisoner or inmate. Any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he was confined because of the commission or attempt to commit one of the above-mentioned offenses or is released from a state hospital to which he was committed as a sexual psychopath under the provisions of Chapter 4 of Part 1 of Division 6 of the Welfare and Institutions Code shall, prior to such discharge, parole, or release, be informed of his duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign such form as may be required by the State Bureau of Criminal Identification and Investigation, stating that the duty of the person to register under this section has been explained to him. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his discharge, parole, or release and shall report such address to the State Bureau of Criminal Identification and Investigation. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send two copies to the State Bureau of Criminal Identification and Investigation, which bureau, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole, or release.

Notice of duty to register; probationer or one paying fine. Any person who after the first day of August, 1950, is convicted in the